

BOARD OF APPEALS CASE NO. 5225

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BEFORE THE

APPLICANT: Paul A. Knopp, Jr.

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ZONING HEARING EXAMINER

REQUEST: Variance to allow an existing apartment as a second dwelling in the Agricultural District; 1338 Knopp Road, Jarrettsville

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 1/23/02 & 1/30/02

HEARING DATE: March 25, 2002

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Record: 1/25/02 & 2/1/02

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Paul A. Knopp, Jr., is requesting a variance, pursuant to Section 267-22A of the Harford County Code, to allow an existing apartment as a second dwelling in an Agricultural District.

The subject parcel is located at 1338 Knopp Road, Jarrettsville, Maryland 21084, in the Fourth Election District, and is more particularly identified on Tax Map 24, Grid Number 3E, Parcel 150. The property contains approximately 3.301 acres.

The Applicant, Paul A. Knopp, Jr., appeared and testified that he is the owner of the subject property. He indicated that he has read the Department of Planning and Zoning's Staff Report, and that he has no changes or corrections to the information contained therein. The witness described his property as an irregular shaped parcel with frontage on Knopp Road. The lot is improved by a brick rancher with an attached rear carport. The property is also improved by a detached two story, three-bay garage, with two apartments located on the second floor, and a rear deck with steps. The lower level of the deck has been enclosed for storage.

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The Applicant testified that the garage and apartments were constructed in 1976, pursuant to Permit No. 1961-76. He had planned to use the three-bay garage for the operation of an automobile body shop on the premises. One of the apartments above the garage was originally intended to be occupied by his son, and the other was to be used as a business office for the body shop. According to the witness, he applied for, and was granted, a business permit for the body shop. He subsequently decided not to open the business and, therefore, never picked up the permit. At this time, no record of the original permit can be located by the County. The Applicant's sons resided in the apartments constructed over the garage until they moved away from home. The apartments have been rented to third parties since that time. Both apartments are currently occupied by tenants; however, their leases will expire shortly, and have not been renewed. The Applicant has advised both tenants that they must vacate the premises at the expiration of their current leases.

There are also two mobile homes on the property. One of these units is located to the right rear of the three-bay garage. This unit is currently occupied by one of the Applicant's sons, who recently lost his job and, thereafter, lost his home. The second mobile home is located to the left of the garage, along the western property line. The Applicant testified that he inherited this unit from his mother, who passed away in 1994. The second mobile home is not occupied, and is used solely for storage. The storage trailer is not hooked up to either water or septic, but there is an extension cord running to the unit from the main dwelling to provide electricity for lighting. The trailer currently occupied by the Applicant's son is hooked up to the same water and septic system that serves the apartments over the garage. The primary dwelling has its own private well and septic system.

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According to the Applicant, there are presently four occupied dwelling units on the property. These are the primary residence, the two apartments located above the garage, and the mobile home occupied by his son. He is asking for a variance to retain one of the apartments above the garage for use as a separate dwelling, so that his son can reside on the property, and assist him with maintenance. The second apartment above the garage, and the mobile home located along the western property line will be used solely for storage. The mobile home presently occupied by Mr. Knopp's son will be removed from the property.

Mr. Knopp testified that the existing garage is between 100 to 125 feet from the closest dwelling. In his opinion, the garage is compatible with other properties in the neighborhood. He stated that the structure is very clean, has new siding, and is aesthetically appealing. He also testified that the granting of the proposed variance will have no adverse impact on neighboring properties. He has spoken with several of his neighbors, none of whom have any objection to the granting of the subject application.

Mr. Anthony McClune, Manager, Division of Land Use Management for the Department of Planning and Zoning, appeared and testified regarding the findings of fact and recommendations made by that agency. The witness stated that the Department of Planning and Zoning recommended approval of the subject request in its March 13, 2002 Staff Report, subject to the conditions set forth in that report. He also indicated that the Department found that the property has a unique configuration, and that the existing apartments have been located on the property for approximately 25 years. The witness next discussed Staff Report Attachment 8, which is a letter from the Harford County Health Department to the Applicant, dated October 3, 2001. The Health Department stated in that letter, that both illegal trailers must be removed from the site, and that both septic systems needed to be evaluated. It also indicated that if the Applicant obtained a variance allowing him to retain one separate apartment above the garage, he would need a 40,000 square foot septic reserve established for the apartment, and a 10,000 square foot septic reserve for the primary dwelling.

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According to Mr. McClune, both septic systems have now been inspected and approved by the Health Department. In addition, he testified that the Applicant has recently obtained a permit (No. 2002007B0030), for the mobile home located along the western edge of the property line to be used as a storage shed.

No witnesses appeared in opposition to the requested variance.

CONCLUSION:

The Applicant, Paul A. Knopp, Jr., is requesting a variance, pursuant to Section 267-22A of the Harford County Code, to allow an existing apartment as a second dwelling in an Agricultural District.

Section 267-22A of the Harford County Code states:

“Separate lots requirements. Except as otherwise permitted by this Part 1, not more than one principal building used for dwelling purposes shall be permitted on any single lot. Establishment of a building with separate dwelling units for rental, cooperative or condominium purposes or as a continuing care retirement community on a single lot shall not violate this requirement.”

Section 267-11 of the Harford County Code permits the granting of variances, stating that:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”

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The Maryland Court of Special Appeals set forth a two-prong test for determining whether a variance should be granted in the case of Cromwell v. Ward, 102 Md. App. 691, (1995). This test is summarized as follows. First, there must be a determination as to whether there is anything unique about the property for which the variance is requested. A lot is unique if there is a finding that a peculiar characteristic or unusual circumstance relating only to the subject property, causes the zoning ordinance to impact more severely on that property than on surrounding properties. Cromwell, supra, at 721. If the subject property is unique, or if unusual circumstances exist, the hearing examiner may proceed to the second prong of the test. The second prong requires a determination as to whether literal enforcement of the zoning ordinance with regard to the unique property would result in practical difficulty or unreasonable hardship to the property owner.

The Hearing Examiner finds that the subject property, and the circumstances surrounding this request are unique, both because the lot has an unusual configuration, and because the existing apartments, have been located on the property for approximately 25 years.

It must next be determined whether denial of the requested variance would create an unreasonable hardship or practical difficulty for the Applicants. The Hearing Officer finds that literal enforcement of the Code would result in practical difficulty for the Applicant in this case because if the requested variance is not granted, he will be forced to evict his son from the property, and will lose the benefit of his assistance in maintaining the subject parcel.

Finally, the Hearing Examiner finds that the granting of the requested variance will not have any adverse impact on, or be substantially detrimental to, adjacent properties, or materially impair the purpose of this Code or the public interest. The Applicant testified that the existing garage is very clean, and well maintained, and is compatible with other properties in the neighborhood. He also testified that he has discussed the requested variance with several of his neighbors, none of whom had any objection to the granting of the requested variance. No witnesses appeared in opposition to the application.

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The Hearing Examiner recommends approval of the Applicant's request subject to the following conditions:

1. The Applicant shall obtain all necessary permit and inspections for the single remaining apartment located above the garage.
2. The second apartment shall be used for storage only, and not as a rental or dwelling unit.
3. The mobile home located to the rear right of the garage shall be removed.
4. The mobile home, located near the west property line shall be used for storage only, and not as a rental or dwelling unit.
5. The Applicant shall comply with all Health Department requirements.
6. The approval shall be for the Applicant only and shall terminate when the property is sold or transferred.

Date: MAY 3, 2002

Rebecca A. Bryant
Zoning Hearing Examiner